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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/323,765

06/01/1999

MARK D. SCOTT

259.006US1

9616

7590

07/27/2006

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EXAMINER

HAYES, ROBERT CLINTON

ART UNIT

PAPER NUMBER

1649

DATE MAILED: 07/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Communication Re: Appeal

Application No.

09/323,765

Applicant(s)

SCOTT ET AL.

Examiner

Art Unit

Robert C. Hayes, Ph.D.

1649

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☐ The Notice of Appeal filed on _____ is not acceptable because:

- (a) ☐ it was not timely filed.
- (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 41.20(b)(1).
- (c) ☐ the appeal fee received on _____ was not timely filed.
- (d) ☐ the submitted fee of \$_____ is insufficient. The appeal fee required by 37 CFR 41.20(b)(1) is \$_____.
- (e) ☐ the appeal is not in compliance with 37 CFR 41.31(a)(1) in that no claim has been twice rejected.
- (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on _____.

2. ☒ The appeal brief filed on 5/2/06 is NOT acceptable for the reason(s) indicated below:

- (a) ☐ the brief and/or brief fee is untimely. See 37 CFR 41.37(a).
- (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 41.20(b)(2).
- (c) ☐ the submitted brief fee of \$_____ is insufficient. The brief fee required by 37 CFR 41.20(b)(2) is \$_____.

The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. See 37 CFR 41.37(a)(1). Extensions of time may be obtained under 37 CFR 1.136(a). See 37 CFR 41.37(e).

3. ☒ The appeal in this application is DISMISSED because:

- (a) ☐ the statutory fee for filing the brief as required under 37 CFR 41.20(b)(2) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
- (b) ☐ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
- (c) ☐ a Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on _____.
- (d) ☒ other: Applicants have failed to provide a Brief in proper form (i.e., related to rejections 1-3 still pending from the Final Office Action of 20050422, etc.) as indicated in the two Notifications for a defective Brief (Paper NOs: 20051223 & 20060425). Note there never were 7 grounds of rejection (pg. 8, 11-17 & 31), no "virus particles" "claimed" during prosecution (i.e., cells are not viruses), Limm et al (1980) is not Lin et al (1976-made of record 6/1/04; pg.31), which further is not recited in the grounds of rejection. Note that the 112, 2nd pp rejection no longer exists (pg. 8 & 10). It is also suggested that 4c & 4d, 5e & 5f, 6g & 6h & 7i be correctly recited as in the submitted claims of 11/26/04 (i.e., 4a & 4b, etc. etc.).

4. ☒ Because of the dismissal of the appeal, this application:

- (a) ☒ is abandoned because there are no allowed claims.
- (b) ☐ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
- (c) ☐ is before the examiner for consideration.



ROBERT C. HAYES, PH.D.
PRIMARY EXAMINER